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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

Federal Communications Commission  
Office of Secretary

In the Matter of )  
 )  
Federal-State Joint Board on ) CC Docket No. 96-45  
Universal Service )  
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To: The Commission )

**COMMENTS OF AMERICA ONLINE, INC.**

America Online, Inc. (AOL), through its attorneys, hereby submits these comments on the Federal-State Joint Board's Recommended Decision regarding universal service.<sup>1/</sup> These comments focus on the Joint Board's recommendation that eligible schools and libraries receive discounts in the form of federally mandated subsidies of between 20 and 90 percent on telecommunications services, Internet access, and internal connections, subject to a \$2.25 billion annual cap.<sup>2/</sup>

**I. INTRODUCTION AND SUMMARY OF POSITION**

As the world's largest online service provider, AOL generates over 35 percent of the traffic on the World Wide Web. AOL also provides more than seven million subscribers with proprietary content including news, information, educational resources, entertainment, electronic mail, conferencing, software, computing support, interactive magazines and newspapers, as well as easy access to the Internet.

AOL commends the Joint Board on its decision to provide discounts to schools and libraries on Internet access offered by all service providers. The Joint Board's recommendation implements

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<sup>1/</sup> *Federal-State Joint Board on Universal Service Recommended Decision*, CC Docket No. 96-45, FCC 96J-3 (rel. Nov. 8, 1996) (Recommended Decision); *see Common Carrier Bureau Seeks Comment on Universal Service Recommended Decision*, Public Notice, DA 96-1891 (rel. Nov. 18, 1996).

<sup>2/</sup> Recommended Decision at ¶ 440.

the schools and libraries section of the Telecommunications Act of 1996 as its sponsors intended -- to bring the educational benefits of the Internet within the reach of all Americans.<sup>3/</sup> The Joint Board's action also represents a significant step forward in bringing the working tools of the Information Age into our nation's schools and libraries.

AOL believes, however, that certain modifications are necessary to ensure that innovative providers are not restricted in their efforts to serve the educational market and to provide schools and libraries with maximum flexibility in choosing the services that best meet their needs. Specifically, AOL urges the following changes and clarifications to the Joint Board's recommendations:

- The Commission should eliminate any requirement that only "minimal content" be bundled with Internet access to qualify for a universal service discount. This requirement may effectively preclude schools and libraries from obtaining Internet access from AOL even if AOL offered Internet access *plus* its own content at a more cost-effective rate than its competitors. Such a requirement also is inconsistent with the underlying rationale of the universal service support mechanism and unnecessarily would interfere with competitive forces in the interactive services market.
- The Commission should replace the "minimal content" language with a per-subscription cap on Internet access fees eligible for universal service support. The cap, which should be set at a level that represents the average cost of Internet access, will ensure that the Internet access subsidy remains within the limits established by the Joint Board.
- The Commission should clarify that schools and libraries may consider factors in addition to price -- technical support, quality, speed, etc. -- in determining the "most cost-effective" method of obtaining Internet access. Such clarification will ensure that schools and libraries have maximum flexibility in selecting service providers that are best able to accommodate their individual needs.

## **II. DISCUSSION**

### **A. The Commission Should Eliminate The "Minimal Content" Language Contained In The Recommended Decision.**

The Joint Board has recommended that the universal service discount apply to "basic conduit, i.e., non-content, access from the school or library to the backbone Internet network."<sup>4/</sup> Under the

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<sup>3/</sup> See 142 Cong. Rec. S707-08 (Daily Ed. Feb. 1, 1996) (Statement of Sen. Snowe).

<sup>4/</sup> Recommended Decision at ¶ 463.

Joint Board's recommendation, it appears that the discount would apply to an offering which bundles Internet access with other content only if (i) there is a "minimal amount" of other content and (ii) the charge for the bundled service offering represents the most cost-effective method for the school or library to obtain Internet access.<sup>5/</sup> To the extent that the "minimal content" language represents a restriction on eligibility for discounts and reimbursement through the universal service funding mechanisms, AOL believes that the FCC should eliminate it, because it is inconsistent with the purpose underlying the schools and libraries provisions of the Telecommunications Act of 1996, and will lead to unintended adverse consequences.

**1. The "Minimal Content" Language Is Inconsistent With Congressional Intent.**

The "minimal content" language appears to have been adopted as a compromise by the Joint Board. Although the Joint Board did not want to subsidize content, it apparently recognized that Internet access providers may have some level of content tied to their services which could be difficult or expensive to remove simply to satisfy universal service funding requirements (*e.g.*, welcome screens, Web home pages, search engines, etc.). The Joint Board compromise may unnecessarily limit the amount of proprietary content that can be bundled with Internet content.

*Content* is what the Internet is all about, and Congress invited the Commission to deliver content to classrooms. Indeed, the Conference Report accompanying the Telecommunications Act of 1996 demonstrates Congress' intent to promote the widespread availability of content in schools and libraries. That report states that the Commission could determine that universal service for schools and libraries includes "the ability to obtain access to educational materials, research information, statistics, information on government services, reports developed by Federal, State, and local govern-

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<sup>5/</sup> *Id.*

ments, and information services which can be carried over the Internet."<sup>6/</sup> Internet content is only one kind of content mentioned by the conferees in this section. Although the Joint Board applied the label "non-content" to Internet access in determining that access rather than content should be subsidized, the Internet, by its very nature, is content.<sup>7/</sup> "Basic conduit access" to the Internet, as the Joint Board calls it, cannot be separated from the essence of the Internet itself, any more than access to broadcast television can be separated from television programming. Thus, in the context of the Recommended Decision, it is a fiction to say that Internet access has a separate non-content identity. In reality, the Internet is nothing more than networked content.

Having made the decision to subsidize access to Internet content, it makes no sense to restrict the amount of additional content which may be bundled with Internet access -- particularly if the Internet access subsidy remains within the limits established by the Joint Board. Indeed, it is incumbent upon the Commission to adopt rules and policies that *encourage*, rather than discourage, the delivery of educational content to schools and libraries, whether provided through the Internet or bundled with Internet content.<sup>8/</sup> To the extent that the "minimal content" language inhibits the widespread distribution of content to schools and libraries, it should be eliminated.

## **2. The "Minimal Content" Language Impermissibly Favors One Information Service Business Model Over Another.**

The "minimal content" language also should be eliminated because it impermissibly favors one information service business model over another. The Joint Board recommended that the Commission establish "competitive neutrality" as a guiding principle to ensure that its universal service

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<sup>6/</sup> S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 133 (1996), *quoted in* Recommended Decision at ¶ 465.

<sup>7/</sup> *See, e.g.* Recommended Decision at ¶ 465 ("By providing . . . discounted Internet access, we find that schools and libraries will have access to the wealth of information available on the Internet").

<sup>8/</sup> *See supra* note 5.

recommendations do not discriminate among services, competitors, and technologies.<sup>9/</sup> The Joint Board also sought to ensure that its recommendations were "consistent with the evolving competitive telecommunications market."<sup>10/</sup> However, the "minimal content" language is neither competitively neutral nor consistent with the evolving competitive telecommunications market.

In the current telecommunications market, commercial online and Internet content providers can reach consumers through two basic business models. In the commercial online model, paying subscribers have access to a host of proprietary content through online service providers such as AOL, which in turn may provide access to Internet content as well. Proprietary content is funded, in part, through subscriber fees. In the pure Internet model, on the other hand, content providers post information on the World Wide Web or otherwise make it available through the Internet; anyone with Internet access can obtain this information. Funding is achieved by means other than subscriber revenues, *e.g.*, through grants, taxes (in the case of government sites), or advertising.<sup>11/</sup> AOL's business model combines these two approaches.

By discounting only access to Internet content, as opposed to access to Internet content which is bundled with other content, the Commission would be favoring the pure Internet business model over the combined online/Internet business model. This would distort incentives, interfere with market forces, and devalue the substantial time, money, and effort that AOL and its content partners have dedicated to the development of this highly successful business model. Thus, the "minimal content" language ignores the realities of the market and is inconsistent with the Joint Board's own competitive neutrality objectives.

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<sup>9/</sup> Recommended Decision at ¶ 23.

<sup>10/</sup> Recommended Decision at ¶ 460.

<sup>11/</sup> Some sites on the Internet are, of course, funded through the commercial online model (*i.e.*, through subscription fees).

**3. The "Minimal Content" Language Unnecessarily Restricts The Range Of Choices Available To Schools And Libraries.**

An additional reason to eliminate the "minimal content" language is that it could prevent innovative content providers such as AOL from participating in the universal service bidding process. Under the Joint Board's proposal, the universal service discount may not apply to AOL's service even if AOL offered bundled Internet access and its proprietary content in a more cost-effective manner than other Internet access providers. As a result, the language might eliminate AOL as a viable option in the universal service bidding process, and arbitrarily preclude schools and libraries from obtaining access to the Internet through AOL. No company should be penalized for offering Internet access *plus* additional educational resources to schools and libraries at a competitive price.

Rather than handicap companies that offer *too much* content in an Internet access package, the Commission should provide incentives for companies to develop new services tailored specifically to educational needs. AOL has built an interactive programming business with original content and features that have catapulted it to the top of the industry. If the universal service discount applied to bundled Internet access and proprietary content, AOL would have an incentive to create unique service offerings specifically for schools and libraries. Such offerings would be consistent with the desire of Congress and the Joint Board to provide schools and libraries maximum flexibility in choosing the information options which will best serve their needs.<sup>12/</sup>

**B. The Commission Should Replace The "Minimal Content" Language With A Cap On Fees For Bundled Access To Internet Content.**

Because concern with the size of the universal service fund may make the Commission reluctant simply to do away with the "minimal content" language, the Commission should replace the "minimal content" language with a cap, per subscription, on fees for access to the Internet, irrespective of

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<sup>12/</sup> See Recommended Decision at ¶ 458 ("We conclude that maximum flexibility will satisfy the goals of Section 254").

whether access to Internet content is bundled with other content. This cap should be set at a level that represents the average cost of Internet access on a nationwide basis.<sup>13/</sup> The overall size of the universal service contribution under this cap would remain within the limits established by the Joint Board because only subscription fees equal to the cost of access to Internet would be discounted.

Under this proposal, as long as an information service subscription fee includes access to the Internet, it would be eligible for the universal service discount up to the cap. This should not introduce any competitive distortions into the universal service bidding process. If the cap on subscription fees is set at the average cost of Internet access, bidders will have no incentive to include unnecessary content in bundled service offerings at a higher price. Marketplace forces will ensure that competitors distinguish their offerings to schools and libraries, as they do in the market as a whole, on the basis of content, quality, and price. Moreover, the requirement that a service be offered to schools and libraries at the provider's "lowest corresponding price" will prevent bidders from artificially inflating their rates to take advantage of the discount program.<sup>14/</sup> Thus, under AOL's proposal, three possible scenarios would emerge:

- (1) If a content provider's bundled service was priced at or below the discount price cap and was cost-effective as compared to an Internet-only service, a school or library would choose that provider and receive the universal service discount on the entire subscription price.
- (2) If a content provider's bundled service was priced above the discount price cap, but a school or library elected to choose that provider because of its additional services, the universal service discount would apply only to the amount of the subscription price up to the cap.
- (3) If a content provider's bundled service was priced above the discount price cap and a school or library did not wish to pay for its additional services, the school or library would choose another provider.

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<sup>13/</sup> The average cost of obtaining Internet access should be relatively easy to compute since subscription fees for Internet access do not vary widely across the country.

<sup>14/</sup> Recommended Decision at ¶ 540.

**C. The Commission Should Clarify That The "Most Cost-Effective" Method To Secure Access To The Internet Includes Factors In Addition To Price.**

The Commission should eliminate any confusion by clearly stating in its rules that "cost-effective" Internet access refers to more than merely lowest-cost service. AOL believes that in evaluating which subscription charge represents the "most cost-effective" method to obtain access to the Internet, schools and libraries should be able to take into account more than just the subscription price. Instead, factors that schools and libraries should be permitted to take into account under a cost-effectiveness determination include the availability of technical support, the speed, reliability, and availability of connections, the value of any proprietary content and user content filters, and a provider's reputation for quality. Under such a rule, the least expensive Internet access provider may not necessarily be the most cost-effective choice.

For example, assume that Company A charges \$14.95 per month for a service package which includes Internet access and additional proprietary content. Assume further that Company B charges \$12.95 per month for a similar service package, but Company A has fewer service interruptions, better quality connections and more extensive customer support services than Company B. If a school or library determines that the quality of Company A's service is sufficiently more attractive than Company B's (*e.g.*, due to savings in the form of less classroom down time), then Company A would be the most cost-effective choice.

The Recommended Decision supports this interpretation by stating that schools and libraries should be afforded the flexibility they may need to procure whatever Internet access arrangements they determine to be cost-effective.<sup>15/</sup> If the Commission were to establish a lowest bid requirement, schools and libraries would have no flexibility at all.

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<sup>15/</sup> Recommended Decision at ¶ 462.




### **III. CONCLUSION**

The newly established universal service support system offers an unprecedented opportunity for the Commission to enhance the quality of education in America. AOL prides itself on being the global leader in the interactive services market. Adoption of the modifications requested herein will allow competitors such as AOL to participate fully in the universal service bidding process, thereby ensuring that schools and libraries will have as much flexibility as possible in selecting information resources that meet their needs.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Comments of America Online, was sent by messenger or first-class mail, postage prepaid, on this 19th day of December, 1996 to the Service List for Docket No. 96-45.

  
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